

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 10, 2022

ZAJI OBATALA ZAJRADHARA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324b Proceeding
	)	OCAHO Case No. 2022B00036
	)	
E-SUPPLY ENTERPRISES,	)	
Respondent.	)	
_____	)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant<sup>1</sup>  
Stephen Nutting, Esq., and Tiberius Mocanu, Esq., for Respondent<sup>2</sup>  
Elizabeth Torres, pro se, for Respondent

ORDER ON MOTIONS AND UPDATED CASE SCHEDULE

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1234b. On March 25, 2022, Complainant, Zaji Obatala Zajradhara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, E-Supply Enterprises, discriminated against him on account

<sup>1</sup> Complainant’s August 9, 2022, filing, discussed in this Order, includes a certificate of service with a slur against Respondent and his son. The Court instructs Complainant to refrain from using slurs and making personal attacks against Respondent’s attorney. *See Zajradhara v. HDH Co., Ltd.*, 16 OCAHO no. 1417c, 7 (2022) (citations omitted). The Court will reject any future filings that mention Respondent’s attorney’s son. *See id.* (citing 28 C.F.R. § 68.28(a)).

<sup>2</sup> On July 25, 2022, the Court received a Motion and Memorandum in Support of Motion to Dismiss Complaint. The filing lists Stephen Nutting, Esq., and Tiberius Mocanu, Esq., as attorneys for Respondent. However, neither attorney has filed a formal notice of appearance with this Court. *See* 28 C.F.R. § 68.33(f). The Court therefore ORDERS Stephen Nutting, Esq., and Tiberius Mocanu, Esq., to file their notices of appearance by December 8, 2022. *Supra* Part IV.

of his citizenship status and national origin. Respondent filed an answer. On June 23, 2022, the Court issued an Order Setting Case Schedule and General Litigation Order.<sup>3</sup>

On July 5, 2022, Complainant filed a “Motion for Discovery and Request for Sanctions Upon The Respondent For Knowingly And With Aforethought Providing Falsified Documents To This Court In Violation of 18 US 1001” (hereinafter Motion for Discovery and Sanctions). On July 12, 2022, Respondent filed a timely Opposition to Complainant’s Motion for Discovery and Sanctions. On July 27, 2022, the Court issued an Order Denying Complainant’s Motion for Discovery and Sanctions. *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438a, 1 (2022).<sup>4</sup>

On July 25, 2022, Respondent filed a Motion and Memorandum in Support of Motion to Dismiss (hereinafter Motion to Dismiss). The motion asserts that Respondent employed three workers on the date Complainant applied for the vacancy announcement at issue. Mot. Dismiss 2. Respondent argues that pursuant to 8 U.S.C. § 1324b(a)(2)(A), this tribunal does not have jurisdiction over the claims of discrimination, and moves to dismiss the complaint. *Id.* Respondent attaches a declaration from the owner and General Manager of E-Supply Enterprises, and attaches the company’s quarterly withholding tax returns for the third quarter of 2021, showing the owner and two employees. *Id.* at 3–6.

On August 9, 2022, Complainant filed a “Notice Of Fraud On The Court And Motion For Discovery AND Motion In Opposition To Dismissal Rule (S): 28CFR Rule 12” (hereinafter, Renewed Motion for Discovery). Complainant reasserts his claims generally, and repeats many of the arguments raised in the July 5, 2022 motion. *See* Renewed Mot. Disc. 2, 4–9 (setting forth arguments on discovery, fraud, and sanctions); *see also E-Supply Enters.*, 16 OCAHO no. 1438a, at 2–5 (analyzing the merits of Complainant’s July 5, 2022 motion). Complainant again asks the Court to grant him discovery, attaching the same list of requests from his prior motion. Renewed Mot. Disc. 2, 9–13. Further, Complainant asks the Court to “move the Court to review the date of the e-Verify/I-129 declaration,” and “review the date of the Respondent’s snail mailings and all signatures therein.” *Id.* at 2.

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<sup>3</sup> For reasons explained below, the Court will vacate the case schedule deadlines set in the June 23, 2022, Order. Part IV of this Order provides the parties an updated case schedule.

<sup>4</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

On September 13, 2022, Complainant filed a “Notice to the Court for Accidentally Using the 18 USC Designations Again: Motion to Compel Discovery” (hereinafter Motion to Compel), dated August 29, 2022. In the Motion to Compel, Complainant states:

I received a letter dated July 5<sup>th</sup>, 2022, said letter stated that the Respondent: has NOT sent the discovery needed to move this matter forward . . . If the [R]espondent does not provide the discovery, the Complainant cannot clearly show how, when, where and by what amount this company . . . Complainant requests that . . . [R]espondent provide all discovery requested.

*Id.* at 1–2. The remainder of Complainant’s motion addresses an electronic inquiry to “USDOL’s ePolicyWorks Online Dialogue Team” on the subject “CNMI-DOL to Have All Its Data Made Electronically Available.” *See id.* at 2–3.

Respondent did not file an opposition to Complainant’s Renewed Motion for Discovery or Motion to Compel.

## II. DISCUSSION

### A. Motion to Dismiss

Respondent’s Motion to Dismiss seeks to dismiss the claims of discrimination based upon citizenship and national origin.<sup>5</sup> Because a challenge to jurisdiction is a challenge to this Court’s authority over the case, the Court must resolve this issue first. As a forum of limited jurisdiction, OCAHO only hears cases within the jurisdiction prescribed by Congress. *See United States v. Facebook, Inc.*, 14 OCAHO no. 1386b, 5–8 (2021) (citations omitted). OCAHO has subject matter jurisdiction over § 1324b citizenship status claims if the employer employs more than three employees. *Zajradhara v. HDH Co., LTD*, 16 OCAHO no. 1417, 2 (2022) (citations omitted). OCAHO’s subject matter jurisdiction for hearing § 1324b national origin allegations is narrower, limited to cases in which an employer employs between four and fourteen employees. *Id.* (citations omitted). Complainant has the burden to demonstrate that OCAHO has jurisdiction over allegations plead in the complaint. *See Zajradhara v. Misamis Constr. (Saipan) LTD.*, 15 OCAHO no. 1396a, 2 (2022).

OCAHO’s rules<sup>6</sup> do not specifically address a motion to dismiss for lack of jurisdiction. However, the rules provide that the Federal Rules of Civil Procedure “may be used as a general guideline in

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<sup>5</sup> Complainant did not assert a claim for retaliation.

<sup>6</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

any situation not provided for or controlled by [OCAHO] rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.” 28 C.F.R. § 68.1. Federal Rule 12(h)(3), which compels dismissal of actions “[w]hen it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter,” may be “used as a general guideline” when an OCAHO administrative law judge (ALJ) has reason to question OCAHO's subject matter jurisdiction. *Ruan v. United States Navy*, 8 OCAHO no. 1046, 714, 716 (2000) (citations omitted).

Complainant pled sufficient facts to establish jurisdiction. Compl. 6. Respondent's attack on OCAHO's subject matter jurisdiction in this case, therefore, is factual in nature.<sup>7</sup> As this case arises in the Northern Mariana Islands, OCAHO may consult caselaw from the Ninth Circuit Court of Appeals. The Ninth Circuit provides that when a trial court reviews a complaint under a factual attack with respect to the court's subject matter jurisdiction, the court “is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Thornhill Publ'g Co. v. Gen. Telephone & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). The trial court may consider matters outside the pleadings, “such as evidence and affidavits.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). However, a trial court must be mindful that “a plaintiff must have ample opportunity to present evidence bearing on the existence of jurisdiction.” *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1243–44 (11th Cir. 1991) (citation omitted); e.g., *Fordjour v. United States*, No. CV-98-1977-PHX-ROS, 2002 WL 1987564, at \*3 (D. Ariz. July 15, 2002) (permitting the plaintiff a “reasonable opportunity to present evidence” in opposition to the defendant’s factual motion to dismiss).

Complainant cannot rest on the mere assertion that factual issues can exist. He must come forward with evidence outside his pleadings to support his jurisdictional allegation. *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1558 (9th Cir. 1987). As Respondent has presented evidence regarding this Court’s jurisdiction, Complainant must come forward with evidence showing that this Court has jurisdiction. In his opposition, Complainant does not specifically challenge the statements or evidence regarding the number of employees. See Renewed Mot. Disc. 2. Instead, he reasserts his claim of discrimination. See *id.*

Nevertheless, as this Court must give Complainant appropriate notice so that he has a reasonable opportunity to present relevant evidence, and mindful that Respondent has resisted discovery, the

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<sup>7</sup> The United States Courts of Appeals apply different standards of review to “facial” and “factual” motions to dismiss for lack of subject matter jurisdiction. As explained in *Ruan v. United States Navy*, “a ‘facial’ motion to dismiss alleges a mere defect in pleading that can be cured if the non-moving party makes appropriate amendments to the complaint. A [‘factual’] motion to dismiss, by contrast, alleges an incurable jurisdictional defect that deprives the court of any authority to adjudicate the dispute.” 8 OCAHO no. 1046, at 717.

Court will allow Complainant limited discovery regarding how many employees Respondent employed during the relevant period.<sup>8</sup> *See also Barone v. Superior Wash & Gasket Corp.*, 10 OCAHO no. 1176, 2 (2013) (“The parties must be given appropriate notice so that they have an opportunity to present relevant materials.”). Accordingly, the Court vacates the case deadlines set in the June 23, 2022, Order, *supra* Part III, and provides the parties with an updated case schedule, stated below and again at Part IV.

Complainant may serve five total discovery requests regarding the number of employees employed by Respondent during the calendar years 2020 and 2021. Complainant must serve the discovery requests by December 8, 2022. Respondent must serve discovery on Complainant by December 22, 2022. Following receipt of the discovery, Complainant may supplement his Opposition to the Motion to Dismiss by January 19, 2023. Complainant’s submission must be accompanied by relevant evidence. Respondent may file a reply to the Motion to Dismiss by February 2, 2023.

#### B. Discovery Motions

The Court’s June 23, 2022, Order provided that “discovery requests must be served at least 30 days before, responses to discovery must be served by, and any motions to compel or other discovery motions must be filed by, August 22, 2022.” *Id.* at 4; *E-Supply Enters.*, 16 OCAHO no. 1438a, at 5 (same). The Court presently has two pending discovery motions from Complainant. In light of the challenge to this Court’s jurisdiction and the vacatur of the original case schedule deadlines, this Court will stay any discovery beyond the jurisdictional discovery permitted above.

In any event, while Complainant requests that Respondent provide all discovery requested, Complainant again did not indicate what discovery was requested. *Mot. Compel 2*; *see also Renewed Mot. Disc. 2*.<sup>9</sup> OCAHO’s rules require a motion to compel to include the nature of the questions or request; the responses or objections of the propounded party; arguments in support of

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<sup>8</sup> The relevant period in this case appears to be calendar years 2020 and 2021. Complainant applied for the position in July 2021, *see Compl. 13*, but it is unclear when the hiring decision was made. Under EEOC's governing statute, jurisdiction attaches over employers with fifteen or more employees for each working day in each of twenty or more calendar weeks preceding the year the alleged discriminatory act occurred. *Caspi v. Trigild Corp.*, 6 OCAHO no. 907, 957, 962–63 (1997) (citations omitted); *see also Flores v. Logan Foods*, 6 OCAHO no. 874, 545, 552 (1996) (denying motion to dismiss where company’s affidavit had only the number of employees per month for three months).

<sup>9</sup> The Court notes that Complainant’s requests for discovery relief also do not comport with the June 23, 2022, Scheduling Order; specifically, as to the requirement that discovery requests, responses, and a declaration that the movant has made a good faith effort to resolve the discovery dispute accompany a discovery motion. Scheduling Order 3 (citing 28 C.F.R. § 68.23(b)).

the motion; and a certification that the movant made a good faith attempt to resolve the discovery dispute without action by the ALJ. 28 C.F.R. § 68.23. Complainant’s Renewed Motion for Discovery includes a list which appears to be what he seeks in discovery. Renewed Mot. Disc. 9–10. However, it is unclear whether he served these discovery requests on Respondent. Accordingly, Complainant’s motions to compel are denied for failure to meet the requirements.

The Court cautions Respondent, however, that a party is required to respond to discovery, or file for a protective order. 28 C.F.R. § 68.18. It is not for the Respondent to determine if the filing comports with OCAHO’s rules; that is for this Court to resolve in any protective order. *Zajradhara v. Algeric Gen. Servs., LLC*, 16 OCAHO no. 1432b, 2 (2022).

### C. Additional Relief Sought

Complainant also moves the Court to: sanction Respondent for knowingly providing false documentation to the Court; strike Respondent’s answer; “review the date of the e-Verify/I-129 declaration before moving to dismiss”; and review dates and signatures of Respondent’s “snail mail” filings. Renewed Mot. Disc. 2, 4.

“An ALJ can impose sanctions in a number of circumstances, such as in discovery,<sup>10</sup> or for violating standards of conduct.” *E-Supply Enters.*, 16 OCAHO no. 1438a, at 3 (citing 28 C.F.R. §§ 68.23, 68.28, 68.35, and then citing *Ogunrinu v. Law Res.*, 13 OCAHO no. 1332c, 3 (2020)).

The Court takes seriously any credible allegation of professional misconduct, including the knowing misrepresentation of matters to this forum. *See Lardy v. United Airlines, Inc.*, 3 OCAHO no. 493, 945, 954 (1992). However, these allegations “should not be made unless there is strong evidence in support thereof, as such allegations are not viewed lightly.” *Kamal-Griffin v. Cahill Gordon & Reindel*, 3 OCAHO no. 460, 647, 648 n.4 (1992) (citations omitted).

Complainant appears to allege that the Respondent edited and/or misrepresented the Job Vacancy Announcement (JVA) in question, but he does not provide any specificity as to how or what was allegedly changed, or clearly articulated any other conduct amounting to misrepresentation. Complainant therefore has not presented “strong evidence” in support of his allegation on misrepresentation, such that a sanction is warranted. *See also United States v. R&SL, Inc.*, 13 OCAHO no. 1333b, 32 (2022) (“[A]rgument is not evidence[.]”) (citing *United States v. Moreland*, 622 F.3d 1147, 1162 (9th Cir. 2010)).

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<sup>10</sup> “Discovery sanctions ‘are normally only imposed after the ALJ has issued an order compelling discovery’—a circumstance inapplicable here.” *Zajradhara v. Ranni’s Corp.*, 16 OCAHO no. 1426a, 3 n.5 (2022) (citing *E-Supply Enters.*, 16 OCAHO no. 1438a, at 3).



Complainant also has not raised new information that would warrant the Court striking Respondent's answer. *See Touissant v. Tekwood Assocs., Inc.*, 6 OCAHO no. 892, 784, 787–88 (1996) (holding that an answer may be struck if it is redundant, immaterial, impertinent, or scandalous material, or it raises insufficient affirmative defenses).

Finally, the Court reviews the contents of all properly filed submissions in a case, including this one. Apart from review, Complainant does not move the Court to take any other action on the “e-Verify/I-129 declaration” and Respondent’s “snail mail” filings. The Court therefore concludes that Complainant has failed to “state with particularity the grounds” for the “relief or order sought” in relation to these requests. 28 CF.R. § 68.11(a).

### III. ORDERS

Complainant's Renewed Motion for Discovery and Motion to Compel are DENIED. Complainant's requests to sanction Respondent, strike Respondent's answer, “review the date of the eVerify/I-129 declaration,” and review dates and signatures of Respondent's “snail mail” filings are DENIED.

The Court VACATES the case schedule deadlines set in the Court's June 23, 2022, Order.

### IV. UPDATED CASE SCHEDULE

Respondent's counsel shall file their notices of appearance by December 8, 2022.

Complainant may serve five total discovery requests regarding the number of employees employed by Respondent during the calendar years 2020 and 2021. Complainant must serve the discovery requests by December 8, 2022.

Respondent must serve any requested discovery regarding the number of employees employed by Respondent during the calendar years 2020 to 2021 on Complainant by December 22, 2022.

Following receipt of the discovery, Complainant may supplement his Opposition to the Motion to Dismiss by January 19, 2023.

Respondent may file a reply by February 2, 2023.

SO ORDERED.

Dated and entered on November 10, 2022.

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Honorable Jean C. King  
Chief Administrative Law Judge